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AUG 31 2006

OFFICE OF PETITIONS

In re Application of	:	
Berkner, et al.	:	
Application No. 10/790,274	:	DECISION ON PETITION
Filed: March 1, 2004	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. PRD-2043-USA-NP	:	

This is a decision on the petition under 37 CFR § 1.78(a)(6), filed May 16, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for benefit of priority to the prior-filed provisional application set forth in the concurrently filed amendment.


The petition is **DISMISSED AS MOOT.**

The petition is accompanied by an amendment to the first sentence of the specification following the title to include a reference to the prior-filed provisional application. A reference to the prior-filed provisional application was also included in the first sentence of the specification, as originally filed, following the title. A petition under 37 CFR 1.78(a)(6) to make a claim of priority to an earlier filed provisional application is only required when the claim for priority to the earlier filed provisional application is not made within the period prescribed by 37 CFR 1.78(a)(5)(ii). In this instance, the claim for priority to the earlier filed provisional application was made on filing, and the Office noted the claim for priority to the prior-filed provisional application in the originally filed specification, as shown by its inclusion on the filing receipt. The issue presented by the instant petition is moot; the petition is dismissed, accordingly.

In view of the above, the \$1,370.00 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1625 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 119(e) to the prior-filed application.


Frances Hicks
Lead Petitions Examiner
Office of Petitions